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2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 ALICE HICKS,

6 Plaintiff,

7 v.

8 CHRISTINA HIGGINS and CHERYL
STROBERT, in their official capacities
as employees of the Washington Human
Rights Commission,

9 Defendants.
10

CASE NO. C19-5711 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

11 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Theresa L. Fricke, United States Magistrate Judge, Dkt. 5, and Plaintiff Alice Hicks’s (“Hicks”) objections to the R&R, Dkt. 6.

12 On September 24, 2019, Judge Fricke issued the R&R recommending that the Court deny Hicks’s motion to proceed *in forma pauperis* and dismiss her complaint for failure to state a claim. Dkt. 5. On October 7, 2019, Hicks filed objections. Dkt. 6.

13 The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

14 In this case, the Court agrees with the R&R that Hicks both fails to state a claim and has failed to establish any actual injury at this time. First, the R&R concludes that

1 the Court lacks subject matter jurisdiction under *Will v. Michigan Dep't of State Police*,
2 491 U.S. 58, 60 (1989) ("*Will*"). The Court agrees that *Will* controls the disposition in
3 this case but, contrary to the R&R conclusions regarding sovereign immunity, *Will*
4 controls because Defendant state employees are not persons under 42 U.S.C. § 1983.
5 With that modification, the Court adopts the R&R on this issue.

6 Second, Hicks asserts that Defendants' alleged unnecessary delay in investigating
7 her claim has resulted in her discrimination claim being barred by the statute of
8 limitations. The R&R rejects this assertion because the limitations period is tolled while
9 the state investigated her claim, and as a result of that tolling, the limitations period has
10 not run. The Court agrees with that conclusion and finds that Hicks has failed to assert an
11 actual injury to establish standing.

12 Regarding Hicks's objections, they are without legal merit.

13 Therefore, the Court having considered the R&R, Hicks's objections, and the
14 remaining record, does hereby find and order as follows:

- 15 (1) The R&R is slightly modified and **ADOPTED**;
- 16 (2) Hicks's motion to proceed *in forma pauperis* is **DENIED** because she fails
17 to state a claim and fails to assert an actual injury; and
- 18 (3) The Clerk shall enter a **JUDGMENT** and close the case.

19 Dated this 12th day of December, 2019.

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22 BENJAMIN H. SETTLE
United States District Judge